

**United States District Court**  
**EASTERN DISTRICT OF TEXAS**  
**SHERMAN DIVISION**

|  |                                      |
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| <b>DADE PROPERTIES,</b>                  | §                                    |
|  | §                                    |
| <b>Plaintiff,</b>                        | §                                    |
|  | §                                    |
| <b>v.</b>                                | § <b>ACTION NO. 4:19-CV-00089</b>    |
|  | § <b>JUDGE MAZZANT/JUDGE JOHNSON</b> |
| <b>MESA UNDERWRITERS SPECIALTY</b>       | §                                    |
| <b>INSURANCE COMPANY, <i>et al.</i>,</b> | §                                    |
|  | §                                    |
| <b>Defendants.</b>                       | §                                    |
|  | §                                    |

**MEMORANDUM ADOPTING REPORT AND**  
**RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, the matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On April 26, 2019, the report of the Magistrate Judge (the “Report”) (Dkt. #16) was entered, containing proposed findings of fact and recommendations that the relief requested in Defendant Mesa Underwriters Specialty Insurance Company’s (“MUSIC”) Notice of Acceptance of Tyson Dandridge and Ken Demaster’s Liability Pursuant to Chapter 542A of the Texas Insurance Code (the “Notice”) (Dkt. #11) be granted. *See id.* Plaintiff’s claims against MUSIC are unaffected by the requested relief, namely, the dismissal of Defendants Tyson Dandridge and Ken Demaster.

Having received the Report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge’s report as the findings and conclusions of the Court.<sup>1</sup>

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<sup>1</sup> In this case, diversity jurisdiction was definitely created when the insured made the election under the Texas Insurance Code. The removal from state court to this Court was in violation of the voluntary-involuntary rule.

Therefore, the relief requested in the Notice of Acceptance of Tyson Dandridge and Ken Demaster's Liability Pursuant to Chapter 542A of the Texas Insurance Code (Dkt. #11) is **GRANTED**. Defendants Tyson Dandridge and Ken Demaster are **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED.**

**SIGNED this 24th day of May, 2019.**



AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE

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However, this procedural defect was waived by the failure of Plaintiff to file a motion to remand. *See Stephens v. Safe on Ins. Co. Of Indiana*, 4:18-cv-595, 2019 WL 109395 (E.D. Tex. Jan. 4, 2019)